

# International Activities of Domestic Charitable Organizations

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# International Activities of Domestic Charitable Organizations

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# International Activities of Domestic Charitable Organizations

## Webinar covers

- Grants and grant making
- Federal withholding requirements
- Foreign Bank Accounts and Reporting (FBAR)
- Reporting requirements to the IRS
- Where to go for help



# What Domestic Organizations CAN do Abroad

Any activity it can do in the U.S. as long as it is consistent with an organization's tax-exempt purpose.



# What 501(c)(3) organizations CANNOT do

## Private benefit and Inurement

- Benefit any private shareholder or individual
- Benefit private interests



# What 501(c)(3) organizations CANNOT do

- Devote a substantial part of activities to influence legislation (Lobbying)
- Participate or intervene in political campaigns for public office



# What 501(c)(3) organizations CANNOT do

- Its purposes and activities may not be illegal or violate public policy
- It must comply with IRS reporting requirements



# Private Benefit & Inurement

## Prohibition on Private Benefit

Activities cannot benefit the private interests of

- Any individual
- Any organization

More than incidental private benefit can result in  
Revocation of exempt status.





# Private Benefit & Inurement

## Inurement

Income or assets may not be used to benefit or to the advantage of insiders. Examples of inurement include

- Payment of dividends
- Payment of unreasonable compensation
- Transfer of property for less than fair market value



# Private Benefit & Inurement

More information

Publication 4221-PC *Compliance Guide for Private Charities*

Publication 4221-PF *Compliance Guide for Private Foundations*

[www.irs.gov/eo](http://www.irs.gov/eo)



# Lobbying

Lobbying or attempting to influence  
Legislation must not be a substantial part of a  
501(c)(3)'s activities

Applies to foreign and domestic legislation



# Political Campaign Intervention

Participation or intervention in political campaigns of candidates for public office

Absolute prohibition



# Political Campaign Intervention

## Some activities outside the restriction

- In a dictatorship-advocating for democracy, rule of law or human rights
- Nonpartisan voter education activities
- Nonpartisan voter registration

The restriction may not apply in authoritarian countries without a political election process as it is known in the U.S.



# Illegal Activities

A charity cannot operate for purposes that are illegal or violate public policy.



# Proper Control and Discretion

Reasonable care to ensure that assets are used  
For charitable purposes

- Vetting of foreign grantee
- An agreement on the grant's purpose
- Oversight of the grant



# Charitable Contributions

Domestic organization must have full control and authority over use of funds; cannot be a “conduit.”





# Charitable Contributions

Contributors may not “ earmark” funds for the use or benefit of any specific organization or individual



# Grants to Individuals

Grants to individuals must be made on a charitable basis and to further the organization's exempt purposes.



# Grants to Individuals

Charity must keep records and case history

- Recipients' names and addresses
- Amounts and purposes of the grants
- How the recipients are selected
- Relationships between recipients and any members, contributors or officials



# Grants by Private Foundations

The IRS must approve the selection procedures before a foundation can make grants for travel, study and similar purposes.

Request IRS approval on Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, or

Separate request for a determination letter



# Grants by Private Foundations

Selection procedures must be objective and non discriminatory

- The purposes and operations of the grant program must be consistent with the foundation's exempt purposes
- The pool of potential recipients must generally constitute a charitable class (unless selection of recipients is based on exceptional qualifications, such as expertise in a particular area)



# Grants by Private Foundations

Selection procedures must be objective and non discriminatory

- The selection criteria must be related to the purposes of the grant
- There must be no conflicts of interest
- There must be effective monitoring, supervision and recordkeeping of the grants



# Grants to Foreign Governments

- Grants can't be made for the general support of a foreign government,
- Grant can go to units of a foreign government that supports a specified charitable purpose.
- Examples are disaster relief programs or operations of schools, hospitals or orphanages.
- The documentation should demonstrate that that the recipient is a foreign government and the organization should keep a copy of the grant letter that specify the charitable purpose of the grant.



# Grants to Foreign 501(c)(3) Organizations

Domestic charities should maintain discretion and control over use of funds

Private foundations should make sure grants are qualifying distributions





# “Friends of” Organizations

## Exercise Discretion and Control

- Charter states board has discretion to allocate to any charity
- Bylaws provide the board reviews all requests for funds



# “Friends of” Organizations

- The bylaws allow the organization to solicit funds for a specific project but retain the organization’s right to withdraw approval of the grant.
- The organization makes these policies known to donors upon request, and refuses to accept earmarked contributions.



# Donor-advised Funds

Tax law limits types of grants allowed

- Prevents grants to individuals
- Prevents grants for non-charitable purposes
- Exercise expenditure responsibility (except grants to most public charities) or
- Make equivalency determination



# Grants to non-exempt Organizations

## Discretion and Control

- Independent decision about providing funds; not required to abide by donor's direction
- Pre-grant inquiry
- Written agreement for use of funds
- Obtain reports on use of funds



# Grants to non-exempt Organizations

Private Foundations-qualifying charitable distributions

- Equivalency determination
- Exercise expenditure responsibility



# Equivalency Determination

## Two steps

- Reasonable judgment that recipient is public charity or exempt operating foundation
- Good faith determination based on affidavit or opinion of counsel



# Expenditure Responsibility

Required for private foundation making grant to any organization other than

- a public charity with a 501(c)(3) determination letter or
- with an equivalency determination by the foundation



# Office of Foreign Assets and Control

- Country-based sanctions banning activities
- List-based program forbidding transactions with specific, named individuals and organizations.
- See OFAC web site at [www.treasury.gov](http://www.treasury.gov)





# Information Reporting Requirements

## Form 990

- Annual requirement
- Has checklist for required schedules



# Information Reporting Requirements

## Schedule F - Part I

Aggregate annual revenues or expenses of more than \$10,000 from international activities.



# Information Reporting Requirements

## Schedule F - Part II

- Organization reports more than \$5,000 in cash grants or non-cash assistance to foreign organizations or foreign governments.



# Information Reporting Requirements

## Schedule F - Part III

- Reports more than \$5,000 in cash grants or non cash assistance to foreign individuals.



# Information Reporting Requirements

## Revenues and expenses from foreign investments

- Form 990, Part IV Line 14b

## Foreign investment in a related organization or certain unrelated partnerships

- Schedule R and Schedule F



# Information Reporting Requirements

Other returns for foreign investments

- Form 926 and 5471 relating to foreign corporations
- Form 3520 and 3520-A relating to foreign trusts and foreign gifts
- Form 8621 relating to passive foreign investment companies and qualified electing funds, and
- Form 8865 relating to foreign partnerships



# Form 990-EZ and Form 990-N

- Which to file depends on gross receipts and assets
- Failure to file a required Form 990, 990-EZ, 990-N for three straight years results in automatic revocation of tax-exempt status.



# Reporting for Private Foundations

- Annual Form 990-PF
- Part XV
  - How to contact the foundation
  - Form preferred for applications
  - Submission deadlines
  - Restrictions or limitations





# Reporting for Private Foundations

## Minimum Information Requirements

- Name and address of grantee
- Amount of each grant
- Foundation status of each recipient
- Purpose of grant
- Relationship of recipient to foundation managers or contributors



# Unrelated Business Income Tax (UBIT)

- Section 901 Internal Revenue Code-UBIT foreign tax credit rules
- See Publication 598, *Unrelated Business Income Tax*



# Reporting on Withholding

See Publication 15, *Circular E, Employer's Tax Guide*, and  
Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*



# FBAR

Treasury Form 90-22.1, *Report on Foreign Bank and Financial Accounts* (FBAR)

- Foreign financial accounts
- Aggregate value of accounts more than \$10,000 any time during the calendar year.



# Information and Assistance

- [www.irs.gov/eo](http://www.irs.gov/eo)
- [www.irsvideos.gov](http://www.irsvideos.gov)
- EO Update electronic newsletter
- Exempt Organization Toll-Free Assistance  
1-877-829-5500

